

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

- and -

SHAWN SHORT,

Plaintiff-Intervenor,

- against -

ELIOT SPITZER, in his official capacity as Governor of the State of New York, ANDREW CUOMO, in his official capacity as Attorney General of the State of New York, MICHAEL HOGAN, in his official capacity as Commissioner of the New York State Office of Mental Health, DIANA JONES RITTER, in her official capacity as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, in his official capacity as Commissioner of the New York State Department of Correctional Services,

Defendants.

Docket Number  
07-CV-2935  
(GEL) (THK)

**NOTICE OF DEFENDANTS' MOTION TO  
DISMISS COMPLAINT PURSUANT TO FRCP 12(b)(6)**

TO:

SHEILA E. SHEA  
Director, Mental Hygiene  
Legal Service for the Third  
Judicial Department (HOLLIE  
S. LEVINE, of Counsel)  
Attorney for Plaintiff-  
Intervenor  
State Office Building  
44 Hawley Street, Room 1602  
Binghamton, New York 13901-  
4435  
Tel. (607) 721-8440  
Fac. (607) 721-8447

MARVIN BERNSTEIN  
Director, Mental Hygiene  
Legal Service for the First  
Judicial Department  
(SADIE ZEA ISHEE, of  
Counsel)  
41 Madison Avenue, 26th Floor  
New York, New York 10010  
Tel. (212) 779-1734  
Fac. (212) 779-7899

SIDNEY HIRSCHFELD  
Director, Mental Hygiene  
Legal Service for the Second  
Judicial Department  
(DENNIS B. FELD, of Counsel)  
170 Old Country Road, Suite  
500  
Mineola, New York 11501  
Tel. (516) 746-4373  
Fac. (516) 746-4372

PLEASE TAKE NOTICE that upon the accompanying memorandum of law and upon all prior pleadings and proceedings herein defendants ELIOT SPITZER, Governor, DIANA JONES RITTER, Commissioner of the Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, Commissioner of the Department of Correctional Services, will move this Court, before the Honorable Gerard E. Lynch, United States District Judge, at the United States Courthouse, United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007, at a date and time to be determined by the Court, for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint against them in its entirety, together with such other and further relief as the Court may deem just and proper in the circumstances.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 6.1 (b) (2) of the Local Civil Rules of the United States District Court for the Southern District of New York and the Individual Practices of the Honorable Gerard E. Lynch, United

States District Judge, (which require that two courtesy copies of all motion papers should be submitted to chambers at the time that reply papers, if any, are served), three copies of plaintiff's answering papers, if any, should be served upon the undersigned no later than November 27, 2007, and defendants' reply papers, if any, will be served on counsel for plaintiff no later than December 4, 2007.

Dated: New York, New York  
November 8, 2007

ANDREW M. CUOMO  
Attorney General of the State of  
New York  
Attorney for Defendants  
By:

---

EDWARD J. CURTIS, JR.  
Assistant Attorney General  
120 Broadway, 24th Floor  
New York, New York 10271  
Tel. (212) 416-8641

Docket No. 07-CV-2935 (GEL) (THK)  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

- and -

SHAWN SHORT,

Plaintiff-Intervenor,

- against -

ELIOT SPITZER, et al.,

Defendants.

---

**NOTICE OF MOTION**

---

**ANDREW M. CUOMO**  
Attorney General of the State of  
New York

---

*ATTORNEY FOR DEFENDANTS*

**BY:** EDWARD J. CURTIS, JR.

Assistant Attorney General  
120 Broadway, 24<sup>TH</sup> Floor  
New York, New York 10271  
(212) 416 - 8641

---

*Personal Service of a copy of the within is admitted this*

\_\_\_\_\_ day of \_\_\_\_\_ 2007

---